



ORIGINAL

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In the matter of                   )  
1983 Cable Royalty               )  
Distribution Proceeding)

Docket No. CRT 84-1-83CD

ORDER ON ALTERING THE REBUTTAL SCHEDULE  
FOR 1983 CABLE DISTRIBUTION PROCEEDING

Counsel for the Program Suppliers requested a change in the order of rebuttal case presentations immediately before the adjournment of the direct examination hearings on the 1983 cable distribution proceeding. The Tribunal ordered the claimants to first attempt to agree on a rebuttal schedule among themselves and failing that, to submit their comments to the Tribunal. Five comments were filed; the Tribunal having accepted the Canadian Claimants' late-filed pleading.

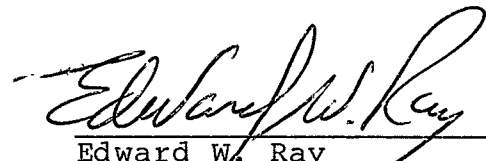
The Program Suppliers, as initiator of the proposed change, requested the order of the rebuttal cases be reversed from the order of the direct case presentations to achieve an equitable influence on the factfinders. They argue that having to present their direct evidence first caused them to bear the disadvantage of an intervening delay before the presentation of the last direct case was given. They believe that as the last presentation is more freshly recalled than the Program Suppliers' case, an offsetting factor such as this change in the order is needed to assure all parties a fair hearing. PBS supported the Program Suppliers' proposal.

The National Association of Broadcasters offered three reasons in support of the previous practice where the Program Suppliers presented its case first in direct and first in rebuttal. First, granting Program Suppliers request means changing the "game" rules, this is unfair for all the other claimants who have adhered to past precedent. Second, the Program Suppliers already have benefited from the advantage of speaking first on direct in which it has "glossed" the other claimants' case before they are presented. Third, each party in this proceeding has an equal burden of persuasion and therefore, no logical reason exists for placing Program Suppliers in a better ordering position than what it has occupied in previous distribution proceedings. Similarly,

the Devotional Claimants opposed changes in the rebuttal order because it would disrupt the other claimant schedules established in reliance on precedent.

The Canadian Claimants also filed a comment against reversing the order, because of the short time it would allow them to prepare their rebuttal. The Canadian Claimants assert the unfairness of such a change in light of the insufficient time since its direct presentation on October 9, 1985 to choose rebuttal witnesses, and apprise their witness of an earlier appearance date. Should the CRT choose to reverse the order of rebuttal presentations, the Canadian Claimants request that they continue as the final party in rebuttal.

In its discretion and upon consideration of the above comments, the Tribunal hereby denies the request to reverse the order of rebuttal presentations. Regardless of the order in which their rebuttals are made, all written transcripts will be reviewed prior to the Tribunal's decision; hence, the parties may be assured that the Tribunal's member will refresh their memories to avoid disadvantaging any party which presents its direct or rebuttal at an early stage in the distribution proceeding. Therefore, out of fairness to all of the parties involved, the rebuttal order will be the same as the direct case order. This denial does not serve as precedent for future hearings.

  
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Edward W. Ray  
Acting Chairman

October 23, 1985